rates, terms, and conditions than price cap LECs. Having said that, in some cases, because the transition to pure packet-based service often requires a considerable investment in equipment by a customer, XO is able to leverage existing equipment if it can serve a customer through TDM-based EoS, provided that the customers' bandwidth requirements are not in excess of 10 Mbps. Moreover, because EoS uses special access DS1s as an input, having a customer on EoS would count toward any minimum commitments under a Commitment Plan. Nonetheless, maintaining a customer by offering Ethernet over TDM circuits in this way can only be a short-term solution as the customer's capacity needs grow.

45. XO does not have a practicable opportunity to migrate any material number of circuits it obtains on a wholesale basis to other providers when a Commitment Plan expires to avoid the lock-up provisions. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** A threshold and insurmountable obstacle is that no competitor or group of competitors could provision the circuits required by XO within a major price cap ILEC's operating territory covered by a Commitment Plan. Only the price cap ILEC has the facilities to meet XO's needs satisfactorily in the varied locations subject to a Commitment Plan. Moreover, the transition to alternative providers would be a lengthy process, from a minimum of three to four months to as much as a few years depending upon the volume of customers to be transitioned and other factors, during which period XO would face either the price cap ILEC's undiscounted month-to-month rates if XO did not renew its Commitment Plan or another long

term agreement with the price cap ILEC. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** In the latter case, of course, XO would face the potential for a shortfall penalty (and possibly early termination penalties on some individual circuits) as it moved its circuits to a competitor.

ILEC Shortfall Penalties Present a Serious Anti-Competitive Hurdle

46. The shortfall penalties XO faces under the Commitment Plans are not always just and reasonable, and they are often discriminatory. In some cases, such as Verizon West, AT&T, and Frontier, if XO fails to keep active the minimum number of DSn circuits to which it was required to commit to get the pricing available under the Commitment Plans, XO pays a penalty equal to the prices for those channel termination circuits that it fell short. In such cases, if XO falls short of its minimum commitment by moving customer services to its network or because it obtained wholesale services or inputs from a competitive provider, XO essentially pays twice to serve the customer, once to provide or purchase the service or input and a second time because of the shortfall penalty.

47. In the case of Verizon's tariffed CDPs in the Verizon North and South territories, the adverse impact of the shortfall penalties is even more severe and unreasonable.

48. Under Verizon's CDPs in Verizon North and South, the minimum commitments for both DS1s and DS3s are based upon channel terminations ("CTs") of each type. More than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the DS3

channel terminations, for example, that XO purchases from Verizon are standalone, zero-mileage channel terminations, the remainder having some mileage transport added (but not multiplexing). Verizon, however, assesses its shortfall penalties on the basis not only of the channel terminations that a CDP customer would have had to purchase to make up any shortfall in its commitment. But, under its interpretation of its tariff (which XO challenges), Verizon also seeks to add on another portion of the shortfall penalty that assumes that the CDP customer would purchase, not only channel terminations to make up the shortfall, but also additional transport mileage and multiplexing, even though these rate elements do not contribute to satisfaction of the minimum commitments. Moreover, when XO purchases a channel termination, it never purchases a channel transport of the same DSn level in connection with it (except for **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** isolated legacy circuits to meet specific and anomalous customer requests). *See* Verizon FCC Tariff No. 1 § 25.1.7(B); Verizon FCC Tariff No. 11 § 25.1.7(B).

49. Verizon chose to structure its CDPs such that when the customer makes a commitment to purchase a requisite number of channel terminations of a certain DSn capacity, Verizon offered discounts not only on channel terminations, but DS3 transport mileage, DS3 multiplexing, and other DS3 services features, whether purchased in connection with channel terminations (in the case of some channel mileage) or not (as is categorically the case with interoffice transport and the mileage associated with that transport). As a result, for example, in 2013 and 2014, XO failed to meet its DS3 minimum commitments in several instances both

within Verizon North and Verizon South.[1] In response, Verizon assessed XO shortfall penalties that were over **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** that XO would have paid for circuits to make up the shortfall and satisfy its minimum commitments of channel termination purchases. This unreasonably excessive penalty, assuming Verizon's interpretation of its tariff is correct, amounted to several million dollars above what XO would have had to have reimburse Verizon to make up for the channel terminations that XO came up short in the first place.

50. Perhaps most significantly, these shortfall penalties have a chilling effect on XO's efforts to deploy new fiber to buildings and compete more directly with Verizon. By replacing an XO customer's TDM-based services with XO fiber-based service in a building, XO stands to not only bring more advanced services to customers in the building, i.e., Ethernet, but to lower its operating costs as well. As part of XO's On-Net Initiative, as with its previous network construction programs, the company reviews the net cost savings that it can expect to achieve by building and lighting fiber to a building rather than relying on wholesale inputs from other providers, most often price cap ILECs, to serve customers. However, the resulting decrease in XO's purchase of DS1 and DS3 services at a location by building to replace those off-net circuits may jeopardize its ability to meet its minimum commitments under the Verizon CDPs. Consequently, XO frequently must consider the impact from shortfall penalties if XO serves the building with its own facilities rather using than a price cap ILEC's TDM channel terminations,

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[1] Verizon New England Inc., and Verizon New York Inc. constitute "Verizon North," the old NYNEX territory. Verizon Virginia LLC, Verizon Delaware, LLC, Verizon

which not infrequently leads XO *not* to construct a lateral into that building. As noted above, XO's minimum commitments were imposed on XO based on its historic spend, not chosen by XO based on its needs taking into account its future construction and service plans.

51. In New York City, for example, following XO's On-Net Initiative reviews in September 2014 and February/March 2015, XO made the decision to not construct fiber to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** buildings, which would have replaced **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** DS3 channel terminations currently purchased from Verizon. These locations otherwise met XO's criteria to bring them on-network. For these buildings, XO estimated that its cost savings over the course of the next **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** – the remainder of XO's CDP term with Verizon – from bringing the buildings on-line would have been approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. However, XO has approximated the potential net shortfall penalties (under Verizon's unreasonable interpretation of its tariffs) that the builds would have triggered **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** over the same period. Indeed, the impact of XO not putting in fiber in these instances extends beyond the buildings in question: had XO been able to justify the build to the target buildings, it would have the opportunity to bring fiber at less cost to buildings that would have been passed by the construction in response to future service requests.

Maryland LLC, Verizon New Jersey Inc., Verizon Pennsylvania LLC, and Verizon

Contrasts between the ILEC Commitment Plans and Terms and Conditions of Other Providers

52. In contrast to the lock-up Commitment Plans of the ILECs, as a buyer of wholesale inputs, XO finds that the service agreements of competitive providers offering wholesale services (including XO itself) do not contain the same sorts of provisions that cause harm. Facilities-based alternative providers, who reach a fraction of business locations with their own facilities, are struggling to gain a toe-hold in the wholesale and retail markets. They do not have the dominant position that ILECs have, especially when it comes to channel terminations. Accordingly, they cannot effectively force customers to sign onto unjust and unreasonable terms and conditions. XO, as a wholesale customer, normally does not have to commit to terms with other competitors longer than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** to get their best rates, compared to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of a minimum commitment under the price cap ILECs' Commitment Plans. Moreover, other providers' plans generally do not have minimum commitments or shortfall penalties. Despite this, the wholesale circuit rates offered by competitors are typically lower than what XO obtains from price cap ILECs even given the discounts in the Commitment Plans. The difference in rates from competitors can be as much as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** less than the discounted price cap ILEC rates under long-term Commitment Plans.

Washington, D.C. Inc., constitute "Verizon South," the former Bell Atlantic territory.

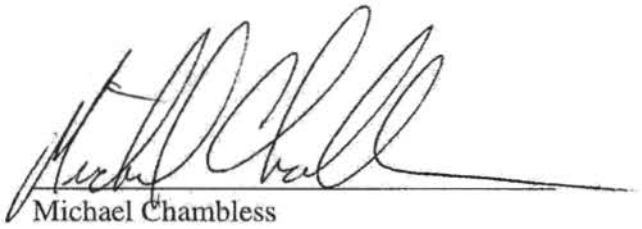
53. When agreements with competitors other than price cap ILECs expire, month-to-month rates may apply. But these rates are typically at the same level as those in the expired deal under evergreen provisions that apply while new arrangements are negotiated. Even where the contract with a competitive provider would allow the assessment of higher rates upon termination, competitive providers often do not invoke those provisions to increase the rates upon expiration. These practices stand in contrast to the provisions of price cap ILECs which use escalated month-to-month rates at the time of Commitment Plan expiration to force a new long-term commitment tying up the bulk of a carrier's Dedicated Services requirements.

54. The foregoing is consistent with XO's practices. Unlike with the Commitment Plans, XO does not impose volume commitments or lock-up provisions in retail and wholesale arrangements offered to its own customers. That is not to say that XO never negotiates larger discounts as a customer's overall volume increases or for longer terms, but, like other competitive providers, XO does not impose unreasonable minimums, maximums, or penalties as with price cap ILECs' tariffed Commitment Plans. XO's arrangements with its customers reflect what one would expect from providers under competitive conditions, where better prices reflect larger volumes of purchases (or the potential for future additional purchases).

This concludes my Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2016



Michael Chambless

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT A

HIGHLY CONFIDENTIAL

HIGHLY CONFIDENTIAL INFORMATION - SUBJECT TO SECOND PROTECTIVE ORDER IN WC NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Redacted for Public Inspection

XO New Off-Net TDM and Ethernet Installations (September 2013 - December 2015)

[redacted]

[redacted]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

DRAFT DECLARATION OF GEORGE KUZMANOVSKI

1. My name is George Kuzmanovski. I am Vice President of Access Planning and Implementation of XO Communications, LLC ("XO"). I joined XO in February, 2012. In my present position, I am responsible for all last mile connectivity associated with XO's current network builds as well as all Network Optimization efforts. From 2000 to 2010, I was at Global Crossing, where I was responsible for the operations of the Service Delivery Group which interacted with all incumbent carriers.

2. I submit this Declaration in support of the Comments of XO in the above-referenced proceeding.

3. XO's network consists of facilities that it owns (which it built or acquired through transactions or fiber swaps) and facilities that it leases or in which it has rights of usage, such as unbundled network elements ("UNEs") and indefeasible rights of use ("IRUs"), supplemented by finished services acquired from others, such as special access, TDM and Ethernet, purchased from incumbent local exchange carriers ("ILECs"). Each of these components has been and will

continue to be critical to the success of XO during the technology transition to an all-IP public communications network.

4. XO (including its predecessors) has, since the mid-1990s, installed, expanded, and updated its network facilities in **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** large and mid-size metropolitan areas across the country. XO entered initially by building metro rings in dense areas of major cities, since these could aggregate traffic from more users and hence were more economical. Lateral facilities, in contrast, most often carried traffic – and were dependent on the spend – from a single location, limiting scale economies. XO metro and last mile fiber provide connections to more than **[BEGIN HIGHLY CONFIDENTIAL]** ■■■ **[END HIGHLY CONFIDENTIAL]** buildings over which it offers on-net services – voice, Ethernet, and other communications services – to many thousands of business and enterprise retail end users and to many carriers on a wholesale basis. XO provides service to many more end users and carriers using facilities and services it leases and purchases ("Type II facilities or services"), in combination with XO's own network facilities or on a standalone basis. In addition, XO's metro network facilities are connected by XO's nationwide fiber backbone.

5. XO has been transforming its original circuit-switched-based network into a managed IP-based network for more than ten years through the installation of routers, soft switches, and session border controllers. For several years now, XO has substantially reduced installations of new on-net TDM facilities. On extremely rare occasions, XO may enter into long-term, capitalized leases for TDM facilities built by another provider, rather than purchase

TDM services. Nevertheless, XO expects that its network will become completely IP-based on pace with, if not ahead of, the industry.

6. In this declaration, I explain the factors that come into play when XO evaluates whether to build new network facilities or to use wholesale inputs from other providers.

7. XO is in the middle of a $500 million capital expansion project which began in 2014 in which several thousand additional buildings will be connected to XO's network with fiber. XO calls this its "On-Net Initiative." XO is focusing its "On-Net Initiative" in metro areas where it already has fiber networks in place, such that the vast bulk of these capital expenditures will be used to add fiber count on existing routes and to install fiber to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** buildings or developments it does not currently reach. Metro areas where XO has existing metro networks present a number of advantages for XO, which does not have the resources to be in every city. Where XO has a network, it knows the marketplace, has a sales force that can be deployed effectively, and understands whether it can build or should buy Type II services to reach customers. Moreover, the costs to reach new customers from existing facilities tend to be much less than the costs to pursue opportunities to serve customers in new metro areas, even if XO has long haul fiber facilities bypassing the city.

8. While XO has picked up the pace of leveraging its existing networks, it remains highly dependent on the facilities of the ILECs and to a much lesser extent other providers. The ILECs have virtually ubiquitous reach for last mile connections to end user premises, and in the majority of instances, for XO, the ILEC is the only entity capable of offering such last-mile access. This is a reflection of the fact that ILECs historically as well as currently have been

more regularly able to make the business case to deploy their own facilities. Historically this was a result of the ILECs' monopoly or near monopoly status. That past translates today into pervasive and persistent relationships with property owners and developers as well as municipal governments which makes it easier and less costly for ILECs, relative to their competitors, to deploy, to obtain permission to add additional conduit to either deploy fiber to a building that currently only has copper, and to deploy facilities to new buildings owned or managed by those owners and developers.

9. Thus, where XO does not have facilities of its own and seeks access to unbundled copper loops or TDM or Ethernet special access services to a proposed customer location, XO will most often have to purchase from the ILEC.

10. For many years now, XO has abandoned network builds or expansions based on speculation. Rather, the process of XO's considering whether to build is driven by the receipt of new service requests from specific customers. (Sometimes XO "deploys" fiber through fiber swaps with other providers because of overall cost implications, or purchasing dark fiber another provider put in the ground (or in the air), but over **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** of the time, when XO serves a building with fiber, XO has constructed the fiber itself.) The paramount consideration is whether the new service request will allow XO to recoup its costs within **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** although, as I explain later, XO will take into account the opportunities building to a new customer might create to serve additional customers and use the revenues from the initial customer and additional prospective customers to recover costs within the same time frame. Another key factor is whether the build will allow XO to reduce its costs

of providing service to other locations and thus increase its ability to offer new services in addition to those being requested by the present customer.

11. Even where there is a customer request in a building XO's network does not currently reach that will generate sufficient revenues and cost reduction to meet the foregoing criterion, XO is unable to construct to all such buildings. Even with the On-Net Initiative funds, XO has a limited budget to construct new facilities, and so therefore must apply strict criteria among candidate builds that meet the threshold consideration described above to maximize revenues and reduce costs in determining when it will build and when it will rely on wholesale inputs obtained from others, typically the ILEC. Thus, even if a build is economically feasible in a given location (under XO's criteria), XO may forgo that opportunity in favor of another option that is perceived as even a better opportunity (perhaps because of chances to leverage the second option down the road to reach potentially even more customers cost effectively). The fact that XO cannot build at each location which, taken in isolation, might allow timely recovery of capital expenditures and reduction of service costs, underscores the continuing importance to XO of ILEC dedicated services offered on just and reasonable rates, terms, and conditions if XO is to compete.

12. The first stage in the process after the sales and marketing team receives a new customer request that may lead to an XO build is the application of XO's North American Pricing Tool ("NAPT"). The NAPT's purpose is to identify the lowest cost option among on-net and off-net alternatives for XO to serve the customer. Where XO does not already have appropriate facilities at the customer location – invariably the lowest cost, highest net-revenue

option – the NAPT will analyze the expected cost of a build and the expected costs of obtaining various Type II facilities and services, providing XO with guidance as to which option to pursue.

13. In addition to NAPT guidance, XO will take into account local marketplace factors the Tool cannot evaluate. Is the customer in a multitenant building? If so, how many tenants are in the building? Will the construction of fiber to the prospective new building pass other commercial buildings or properties where new buildings are expected? How many tenants are there per such building and what type of tenants are there, meaning what levels of bandwidth demand can they be expected to generate? What has been XO's historical penetration rates in similar buildings? Does the prospective customer instigating the build/buy evaluation have multiple locations XO's network can reach and/or otherwise serve cost effectively, thereby giving XO further potential opportunities to serve the customer? Are there government barriers to the build, and will XO be able to obtain entry to the building?

14. As I noted before, XO does not engage in speculative builds. As a general rule, based on a customer request for service, XO is looking to recover its capital expenditure within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which is a stricter timeframe than XO applied only a few years ago, where XO would look to recover its construction costs within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** This time frame has been shortened to drive decisions that focus on maximizing our existing assets first to quickly generate margin and create a self-sustaining business model.

15. Thus, where there is a single new customer[1] and the costs to build to serve that customer can be recovered within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** based on monthly revenues from that customer alone, XO generally considers it economic as a threshold matter to build to that location. XO's average monthly revenues per business customer are approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. So, on average, if the cost of a build to a single customer is less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** XO will consider it economic.

16. While an average build may be considered economic when the cost is less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** the average cost for actual builds XO undertakes, including the average cost of permitting, is now trending downwards towards **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** particularly as XO seeks to leverage its existing network and recover its costs within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Of course, in some locations, the cost can be quite higher. In New York City, where the costs of construction are much higher, the cost of builds XO typically undertakes at this time is between **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which means the revenue opportunity (combined with cost reduction) must be much greater.

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[1] The single new customer may be the sole tenant in a building or a tenant in a building with **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** tenants or fewer.

17. When constructing a lateral to a building to provide Ethernet service, XO incurs an initial fixed cost of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** for standard Ethernet electronics over and above the cost of construction and permitting for service speeds between 10 Mbps and 1 Gbps. For speeds above 1 Gbps, this cost increases to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** If a customer requests to have its existing Ethernet upgraded to a faster speed, XO typically incurs minimal marginal costs – because XO can usually upgrade the existing equipment quite easily through a remote hands arrangement – unless the customer seeks a significant increase (i.e. above 1 Gbps).

18. There is not a minimum spend that is required before XO will consider building. It is always a comparison between the construction and other costs, and the revenue opportunity. Accordingly, while typical builds that can be cost justified are for 10 Mbps or greater speeds, on occasion XO can pull fiber from the nearest splice point or upgrade existing facilities to provide a customer with slower speed or legacy service.

19. When evaluating whether to build or buy to meet a new customer request where XO already serves the customer using DSn circuits purchased under an ILEC special access commitment plan, XO necessarily must evaluate the potential impact on meeting its minimum commitment under the plan. Sometimes filling the customer request through a build may reduce XO's special access spend. In most instances, if a build will put XO at greater risk of falling short of its minimum purchase requirements under the commitment plan, XO typically will not undertake the build. However, in certain limited circumstances in which an initial customer

purchase order is substantial enough to cover all or a significant portion of the build cost, taking into account the costs of maintaining the circuit under the ILEC commitment plan or the cost of a shortfall penalty, XO may nevertheless move forward with the build.

20. When a prospective build is to a commercial multi-tenant environment ("MTE") of more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** tenants or where the prospective build will pass close to other buildings or MTEs, XO does not necessarily look for recovery of construction costs from the first customer. Instead, XO may look for the first customer to contribute **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the costs of construction in the first **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** XO will take into account the expected rates of new service sales in buildings of that size range and the number of tenants in or near the building. Thus, XO may rely on recovering the remainder of the costs through prospective additional customers based on certain predictive tools and even the prospect for wholesale buyers of service and capacity within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** (As a general matter, based on the industry "standard" that commercial retail agreements tend to be **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of tenants in a particular building will become "available" (i.e. their existing service contracts will expire) in a given year. As such, at any particular point in time, XO could feasibly solicit **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of a building's tenants to offer its services.) So while not building on speculation *per se* – there must be a substantial

customer request in place – XO is willing to take calculated risks to recover even the majority of the capital costs from entities not yet customers if the overall local circumstances support that risk.

21. Indeed, historically, on average, around **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of XO's revenues in lit buildings come from wholesale opportunities.

22. Typically, XO does not charge customers expressly for construction costs. Rather, XO seeks to recover its costs of construction through monthly recurring charges, not a large non-recurring or special construction charge. However, in limited cases, some customers may be willing and even desire to pay some of the capital costs up front, which will change the foregoing analysis accordingly. For example, some wholesale customers, seeking to have smaller monthly recurring charges may accept, or even request, a special construction charge to achieve that objective. (The up-front charges, combined with the monthly charges for **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** should recover the capital costs.) For some larger customers that are willing to contribute toward construction costs, in addition to paying monthly charges, XO may be willing to make builds of greater distance to reach them, but this scenario is more the exception than the rule.

23. Another key factor for XO in choosing to build to a customer in an MTE who, standing alone, will not contribute enough revenues to recover the full capital costs in **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** is the expense for renting space for equipment in the building. If the landlord manages a group of buildings in an area, XO will often try to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted]

[END HIGHLY CONFIDENTIAL] Space rental costs, like upfront construction costs, must be recovered through the monthly charges. Where rent charges are high, they can make a build impractical that is otherwise economic.

24. XO does not have a hard and fast rule regarding the distance over which it will build rather than buy, or the minimum level or capacity of service. Again, demand for service and the potential to recover capital expenditures over **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** is the central consideration. Nonetheless, as a rule of thumb, in Tier I cities, XO is extremely unlikely to build if the building is more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** linear feet from a splice point on XO fiber, and the overwhelming number of builds XO undertakes have been within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** linear feet. Of the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** builds that XO undertook and completed in 2014 and 2015 as part of its On-Net Initiative, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** were less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** aerial feet (as the bird flies), and total of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** were less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** aerial feet.

25. Indeed, in certain cities, cost per linear foot can be prohibitively expensive, often depending on terrain and layout and government requirements. In San Francisco's central business district, for example, the costs can be as high as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** tending to severely reduce the length of builds to customer premises that are likely to be feasible. In more "open" cities, for instance, which permit lower cost, aerial construction, and where the pole infrastructure is in place for it, XO sometimes may look at considerably longer builds, as much as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** linear feet or more, if the size of the expected customer spend to support such a long build is there.

26. Mindful of the obstacles that builds can create, XO takes several steps when it does engage in construction projects to facilitate subsequent potential construction of laterals to other buildings. One is that XO will lay a higher fiber count cable than it needs or anticipates using in the near term. Second, XO will change or implement new connection points and handholds as it builds so as to facilitate additional laterals. Third, to maximize its resources, XO will in some instances build "mini-rings" that can connect approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** buildings along a particular route. These mini-rings can in extreme cases span a total distance of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** The mini-rings are built in a "circular" pattern and generally will be constructed within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** off of the existing network. This is not surprising as cost per linear foot is one of the main drivers of construction cost, particularly in central business districts where XO is most likely to be present given its

history of Metro network builds. As a result of building smarter in this way, and then leveraging these practices, XO has been able to lower its overall average costs to light a new building. Prior to April 2014, XO's historical average cost per lit building was approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. As noted above, the current cost is trending toward **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which is partially the result of its decisions to build in a way that lowers the margins for future builds, as well as its insistence to build where there is a high degree of confidence that capital expenditures can be recovered in no more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

27. XO also considers route diversity when undertaking a new build which may give it the opportunity for additional customers down the road. For example, some governmental and large enterprise customers look for route diversity among competitive fiber networks, so as to give their services increased resiliency in case of a natural disaster or potential terrorist activity. This is common, for example, in a corridor of government and large enterprise tenants such as Ashburn, VA. Thus, in such environments, XO often will **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

28. The number of competitors that already serve an MTE building of greater than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** tenants is a factor when XO considers building, albeit a relatively minor one. The primary considerations,

provided the threshold level of immediate demand has been established – a customer that will allow recovery of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the construction costs – are the size of the building and number of tenants, and XO's historical penetration rates in similar buildings.

29. Even if it is economic for XO to build rather than buy, XO must also take into consideration its ability to access the building. Public rights-of-way ("PROW") permits are required, and XO will take into account the period of time that is typically required to obtain permits in the particular jurisdiction, as well as the costs associated with the build as a result of such factors as one-time and recurring franchise or permit fees and restoration obligations. In some situations, XO simply cannot build because, there may be a moratorium and, if needed, XO will not be able to lay its own conduit. In other instances, the potential delays in obtaining permitting may make it unlikely that XO could hold on to the new customer without commencing service sooner, leading to XO pursuing a Type II solution.

30. ILECs have advantages over XO and other competitors when it comes to PROW access. For example, in many jurisdictions, ILECs are able to lay new conduit in PROW under legacy franchise agreements that uniquely benefit them. In many cities, XO and other competitors under their franchise agreements must pay a per linear foot fee to occupy municipal (or other local or state government) PROW. By contrast, ILECs often pay a smaller fee, or even no fee at all, to lay conduit. For example in New York City, XO is required to pay franchise fees related to telecommunications services, while the ILEC (Verizon) is not required to pay this franchise fee.

31. In other municipalities, XO and other competitors pay franchise fees as a percentage of gross revenues. But even in these instances, ILECs have an effective advantage over their competitors where they pay a lesser fee or no fee at all. Despite the fact that the construction of a lateral or extension of a ring in and of itself does not increase the competitors' franchise fee payments in percentage of gross revenues situations, because the purpose of the build would be to serve additional customers, and thus receive increased revenues, the increased costs from the franchise put them at even a greater disadvantage relative to ILECs that pay a lower rate or no franchise fee at all.

32. Further, XO must obtain the permission of the owner or manager to access the building. At the time XO makes its buy versus build decision, it has limited tools to assess whether a particular owner or landlord will object to XO building fiber to the building. At best, XO's team may have notes from previous attempts involving the owner or landlord, perhaps at a different location. Building owners often are not interested in having a provider in addition to the ILEC construct to their buildings. Where building owner cooperation is not forthcoming, this presents an absolute obstacle for XO; I understand that building owners have no regulatory obligation (other than in Texas) to permit access to their properties. Indeed, even if XO can lay its fiber through existing conduit of another provider, which is almost always preferable because of the lower cost, the building owner can still withhold rights from XO to access the building with its facilities. Unfortunately, XO finds out about these types of obstacles later in the process, and a property owner's denial of access happens frequently in my experience. Even today, ILECs are almost always the first to construct facilities to a building or building center. Indeed, owners and developers often will invite the ILECs to build as construction is ongoing. Property

owners often have the ILECs install conduit and facilities at the outset and do not want new carriers to physically change the "building aesthetics" through new construction. In several major metropolitan areas such as New York, San Francisco, Chicago and Boston, XO is routinely denied access to properties based on the property owners' decisions made during the "construction."

33. One manifestation that the ILECs have access to every building is that in virtually every one of the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** buildings where XO has lit facilities, the ILEC is also present. And in the majority of those buildings, several, if not as many as five or six facilities-based competitors, are also present. (Historically, in XO's experience, CLECs have tended to cluster their fiber paths in areas where there is the combination of concentrations of MTE buildings with large numbers of tenants, plenty of existing utility conduit, and spare fiber available for swap, purchase, or IRUs (from initial metro-ring builders), presumably because there is more opportunity to acquire customers in these areas at lower cost, thereby reducing the risk of a build or fiber purchase.) It is exceedingly rare that XO is the first provider in a building. XO is **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Where XO has fiber to a building but the ILEC has only copper, the ILEC is likely to be in the process of upgrading its network to provide fiber-based services in most metro areas where XO offers on-net services.

34. Even if a trench for a new conduit, when opened by an incumbent, were made available to competitors to lay their own conduit, competitors may not be as readily able to do so at the time of the opportunity because of builds going on elsewhere or simply because of lack of

allocated capital funds for the project. As a result of these challenges, XO normally stands in a less advantageous position than incumbent local exchange carriers with respect to the deployment of new conduit facilities to buildings.

35. Such additional and unexpected costs or hurdles from PROW access and dealing with building owners and landlords often lead XO to cancel a build that otherwise may be economic. Indeed, as of January 4, 2016, as part of its current On-Net Initiative, XO had cancelled **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** builds that it were approved. In comparison, XO had completed approximately **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** builds and another **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** were in process (although some of those may ultimately be cancelled for similar reasons). (As a point of comparison, XO had already analyzed over **[BEGIN HIGHLY CONFIDENTIAL]** ■ **[END HIGHLY CONFIDENTIAL]** buildings as of that date for possible builds through the on-net initiative.)

36. I want to finish with just a few comments about wireless alternatives to wireline special access. XO is one of the nation's largest holders of wireless LMDS (Local Multipoint Distribution Service) licenses. However, to date, XO has not seen a meaningful market opportunity for establishing wireless links in lieu of building fiber on a standalone basis. To the extent that XO provides LMDS to a customer, it is one that it serves on a wireline basis and the LMDS offers a diverse communications path. XO uses its wireless media in the rare instance that it cannot reach a customer with wireline Type I or II facilities or to give a customer primary or backup transmission capabilities.

HIGHLY CONFIDENTIAL INFORMATION - SUBJECT TO SECOND PROTECTIVE ORDER IN WC NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Redacted for Public Inspection

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2016

George Kuzmanovski

George Kuzmanovski